IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8480 of 2005

Maharashtra Jeevan Pradhikaran
Express Towers and others. ... Petitioners.

V/s.

Rajendra Prabhakar Ingawale
and others. ... Respondents.

Mrs.Neeta P. Karnik for the petitioners.

N.V.Bandiwadekar with Sanjay Prabhu
for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 25th April 2006.

P.C. :

Heard learned counsel for the rival parties. Perused petition.

The Facts :

2. This petition is directed against the order dated 27th May, 2005 passed in Revision (ULP) NO.51 of 2000 by the Industrial Court, Thane confirming the order dated 28th March, 2000 passed by the Third Labour Court, Thane in Complaint (ULP) No.174 of 1997 holding that the petitioners have indulged in

unfair labour practice under item 1(a), (b) and (f) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short) and directing them to reinstate the complainant/ respondent No.1 herein on the post which he was holding at the time of his termination of service, with continuity of service and full back wages with effect from 31st March, 1997.

Submissions :

3. Mrs.Karnik, learned counsel for the petitioners submits that respondent No.1 was appointed by the petitioners to a vacant post i.e. a temporary establishment by the appointment order dated 1st November, 1995. According to her, as per the conditions incorporated in the appointment order, the services of respondent No.1 were liable to be terminated without assigning any reason. Accordingly, services of respondent No.1 were terminated by letter dated 31st March, 1997.

4. Mrs.Karnik further submits that the order of termination of respondent No.1 is a termination simplicitor. It does not cast any stigma on respondent No.1. That respondent No.1 being a temporary workman, his services were liable to be terminated in the manner in which the termination

order was issued.

5. Mrs.Karnik, without prejudice to the above contention, relied upon the GR dated 12th October, 1993 issued by the State of Maharashtra; wherein a judgment of the Apex Court in the case of ***District Collection Vijianaqaram*** **v.** ***M.Tripura Sundari Devi***, 1990 (4) SLR 237 is referred to say that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, then it does not remain a matter only between the appointing authority and the appointee concerned. All those who had similar or better qualifications than the appointee or appointees and those who had not applied for the post because they did not possess the qualifications mentioned in the advertisement can be said to be aggrieved persons. In the circumstances, according to her, in the light of the Apex Court judgment it amounts to a fraud on public to appoint such person with inferior qualification, unless it is clearly stated in the advertisement itself that the qualifications are relaxable. That no Court should be a party to the perpetuation of the fraudulent practice.

6. Mrs.Karnik further submits that respondent NO.1 was appointed on a temporary basis in a temporary establishment of a statutory authority. He was not a permanent employee as such there was no legal hurdle in the way of the petitioner-

employer to terminate the services of respondent No.1 without holding an enquiry.

7. Mrs.Karnik further submits that the Collector had already investigated the case of respondent No.1; wherein a freedom fighter had deposed that respondent No.1 was not at all related to her in any manner whatsoever. That the said order of the Collector has not been challenged either by the freedom fighter or her nominee i.e. respondent No.1. Therefore, according to her, it was not necessary to comply with the principles of natural justice.

8. Mrs.Karnik also placed reliance on the judgment of the Apex Court in the case of ***A.P.Public Service Commission*** **v.** ***K.Venkateshram*** , AIR 2005 SC 4292; wherein a notification inviting applications, issued by the Commission, specifically, informed the candidates that giving of any false/wrong information or suppression of material information would lead to cancellation of their candidature. The applicant (respondent No.1 therein) had kept Column No.11, pertaining to previous employment, totally blank. Subsequently, it was noticed that he was employed as a teacher. The act of keeping Column No.11 blank and thereby suppressing material information resulted in cancellation of the appointment of the candidate; which held to be proper in view of suppression of material by the

applicant. Relying on this judgment Mrs.Karnik urged that this is a case of suppression of material facts as such action of termination of respondent No.1 is legal and proper.

Consideration :

9. Having heard Mrs.Karnik at length, turning to the facts of the case at hand, there was no advertisement floated prior to the appointment of respondent No.1. Therefore, question of declaring qualification in the application did not arise. The judgment of the Apex Court in the case of ***District Collection Vijianaqaram*** (supra) relied upon by Mrs.Karnik can hardly be said to be applicable to the present case.

10. In my opinion, this judgment in the case of A.P.Public Commission (supra) cited by Mrs.Karnik also does not help the petitioners in view of following emerging facts:

> That respondent No.1 was appointed on temporary establishment is not in dispute. It is also not in dispute that his services were terminated by order dated 31st March, 1997. The reason given for termination referred to in the termination order is that the appointment of respondent No.1 to the post of Assistant Draftsman was held to be

illegal. The very reading of the termination order would show that the order of termination is not a simplicitor but based on the ground that the appointment of respondent No.1- workman found illegal, may by the Collector.

There is no material on record to show that at any point of time the Collector had given opportunity of hearing to respondent No.1.

There is no material on record to suggest that any adverse order passed by the Collector was ever communicated to respondent No.1. The communication from the Collector vide letter dated 14th February, 1997 was to petitioner No.2 alone. No copy of that letter was marked to respondent NO.1- workman.

The respondent No.1 for the first time appears to have been informed about the order of the collector vide order of termination dated 31st March, 1997. The reading of the termination order would go to show that it is a communication to respondent No.1 that his appointment in the post of Draftsman is held to be illegal. Who has held this appointment illegal is not mentioned. Why and how his appointment was found to be illegal has not been disclosed in the order of termination.

11. In the circumstances, it is clear that the termination order entails civil consequences, especially, when respondent No.1 has completed more than 1½ years of service with the petitioners. It was expected on the part of the petitioners to communicate adverse material to respondent No.1 to seek his explanation; so as to give him an opportunity of hearing before terminating his services. Principles of natural justice have not been followed.

12. The submission of Mrs.Karnik based on the judgment of the ***A.P.Public Commission*** (supra) itself is an admission on the part of the petitioner that the order of termination is because respondent No.1 suppressed true facts while seeking appointment to the post. If this be correct, then it was all the more necessary for the petitioner to follow principles of natural justice before effecting termination of services of respondent No.1.

13. In the above back-drop, if the impugned order holds unfair labour practice on the part of the petitioners under item 1(a), (b) and (f) of Schedule IV of the MRTU & PULP Act, no fault can be found with the impugned order. The petition is, thus, liable to be dismissed.

In the result petition is dismissed in limine with no order as to costs.

15. At this stage, learned counsel for the petitioners prayed for continuation of stay for further eight weeks. The prayer is rejected.